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BEFORE THE
ILLINOIS COMMERCE COMMISSION

Ameren Transmission Company)
of Illinois,)
) No. 14-0522
)
)
)
)

Petition for an Order pursuant to Section
8-509 of the Public Utilities Act authorizing use
of Eminent Domain Power.

Met, pursuant to notice, September 22, 2014,
at 9:04 a.m.

BEFORE:

John D. Albers
Administrative Law Judge

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1 PROCEEDINGS

2 JUDGE ALBERS: All right. By the authority
3 vested in me by the Illinois Commerce Commission, I
4 now call docket number 14-0522. This docket was
5 initiated by Ameren Transmission Company of
6 Illinois and concerned a petition for an Order
7 pursuant to Section 8-509 of the Public Utilities
8 Act authorizing the use of eminent domain power.

9 May I have the appearances for the record,
10 please?

11 MR. DEARMONT: Good morning. Eric Dearmont
12 on behalf of Ameren Transmission Company Of
13 Illinois. My business address is 1901 Chouteau
14 Avenue, St. Louis, Missouri, 63166.

15 MS. RUST: Good morning. Shannon Rust of
16 Whitt Sturtevant, LLP, 88 East Broad Street, Suite
17 1590, Columbus, Ohio 43215, appearing on behalf of
18 Ameren Transmission Company of Illinois.

19 MR. STURTEVANT: Also appearing on behalf of
20 Ameren Transmission Company of Illinois, Albert
21 Sturtevant of Whitt Sturtevant, LLP.

22 JUDGE ALBERS: If you want to, you don't
23 have to.

24 MR. STURTEVANT: 180 North LaSalle, Suite

1 2001, Chicago, Illinois 60601.

2 MR. O'BRIEN: Joseph H. O'Brien on behalf of
3 the firm McNamara & Evans, 931 South Fourth Street,
4 Springfield, Illinois, 62705. Our phone number is
5 528-8476 appearing on behalf of intervenors Liehr,
6 Hoewing and Jones whose intervention previously has
7 been granted.

8 JUDGE ALBERS: Correct. Mr. Sagone?

9 MR. SAGONE: On behalf of the staff
10 witnesses of the Illinois Commerce Commission, John
11 Sagone. That is S-A-G-O-N-E. And Matt Harvey.
12 that is H-A-R-V-E-Y. Address is 160 North LaSalle
13 Street, Suite c-800, Chicago 60601. Telephone is
14 312-793-8184.

15 JUDGE ALBERS: Thank you. Were there any
16 other attorneys wishing to enter an appearance?

17 (No response.)

18 JUDGE ALBERS: All right. Let the record
19 reflect no response.

20 As far as preliminary matters, the only
21 thing that I have that I wanted to confirm with the
22 company is still seeking eminent domain on eight
23 parcels owned by seven landowners; is that correct?

24 MR. DEARMONT: It was, but it is not at this

1 time. That's on my preliminary list as well. I'm
2 pleased to report on Friday afternoon we closed the
3 tract designated as ILRPRQAD014 which is owned by
4 the Christopher B. Hunter trust.

5 If it is okay with you, Judge, we would
6 propose to note that in our post-hearing briefs and
7 then, consistent with what we have done in the
8 past, file a revised landowner list and packet of
9 legal descriptions for those easements that we
10 continue to seek.

11 JUDGE ALBERS: Yes. That's with your
12 initial brief?

13 MR. DEARMONT: Correct.

14 JUDGE ALBERS: That's fine. So now down to
15 seven parcels owned by six landowners?

16 MR. DEARMONT: That's correct.

17 JUDGE ALBERS: And the only other
18 preliminary matter that I have is that after the
19 hearing today I plan to issue a ruling with an
20 outline for the parties to follow in their briefs
21 just so we are all working from the same place when
22 it comes time for me to write the proposed order.

23 MR. DEARMONT: Understood.

24 JUDGE ALBERS: So -- and then does anybody

1 else have any preliminary matters they wanted to
2 raise?

3 MR. DEARMONT: I do have one other item. I
4 do have one other item that I would like to bring
5 up, Judge.

6 I discussed this with Mr. O'Brien, but
7 attached as Jones Exhibit 1.2, Jones Exhibit 1.1
8 and Jones Exhibit 1.3, Hoewing Exhibit 1.1, Hoewing
9 Exhibit 1.2 and Hoewing Exhibit 1.3, is certain
10 information that ATXI considers to be confidential
11 and contain terms of negotiations.

12 It is a bit premature, but I don't have any
13 issue with that information being offered into the
14 record subject to the appropriate redactions, but I
15 would ask that it be removed from its current form
16 on the e-Docket and that counsel work together to
17 file redacted versions of those documents
18 consistent with the information that we believe to
19 be --

20 MR. O'BRIEN: I have no objection.

21 JUDGE ALBERS: All right. Thank you, Mr.
22 O'Brien.

23 Could you just list those exhibit numbers
24 again to make sure I relay the right ones to the

1 clerk's office?

2 MR. DEARMONT: I can. Jones Exhibit 1.1,
3 Jones Exhibit 1.2, Jones Exhibit 1.3, Hoewing
4 Exhibit 1.1, Hoewing Exhibit 1.2, and Hoewing
5 Exhibit 1.3.

6 JUDGE ALBERS: Now, depending how they were
7 initially filed on e-Docket, we may need to have
8 like the entire packet of information from those
9 filed again.

10 So if they were filed as one PDF they will
11 take the entire PDF off and then resubmit.

12 Does that make sense?

13 MR. O'BRIEN: It does make sense. I'm not
14 sure how they were filed.

15 JUDGE ALBERS: Sitting right here right now
16 I couldn't tell you, but FYI in case it comes up.

17 Any other preliminary matters, then?

18 MR. DEARMONT: I have no other preliminary
19 matters.

20 JUDGE ALBERS: Okay. Mr. O'Brien?

21 MR. O'BRIEN: No.

22 JUDGE ALBERS: Mr. Sagone, do you have any
23 preliminary matters?

24 MR. SAGONE: I just wanted to confirm that

1 was Hoewing Exhibit 1.1 through 1.3 --

2 MR. DEARMONT: Correct.

3 MR. SAGONE: -- for the last part?

4 Okay. Thank you.

5 JUDGE ALBERS: Okay. Well, start with our

6 witnesses, then. Did Mr. Murbarger want to go

7 first since he is currently --

8 MR. DEARMONT: We would appreciate that,

9 Judge. At this time ATXI would call to the stand

10 telephonically ATXI witness Mr. Jerry Murbarger.

11 JUDGE ALBERS: Okay. I will go ahead and

12 swear all the witness in at the same. So if you

13 are testifying today, please stand up, raise your

14 right hand.

15 (Whereupon all witnesses were duly sworn.)

16 JUDGE ALBERS: Thank you all. Thank you,

17 Mr. Murbarger.

18 (Whereupon Jerry Murbarger

19 testified via telephone.)

20 DIRECT EXAMINATION

21 QUESTIONS BY MR. DEARMONT:

22 Q. Good morning, Mr. Murbarger. How are

23 you?

24 A. Pretty good.

1 Q. Are you the same Jerry Murbarger who
2 prepared and caused to be filed what's been
3 designated as ATXI Exhibit 3.0 consisting of your
4 direct testimony which was filed on e-Docket on
5 August 26th of this year?

6 A. Yes, I am.

7 Q. Do you have any corrections to that
8 testimony?

9 A. No, I do not.

10 Q. Is everything contained therein true and
11 accurate to the best of your knowledge and belief?

12 A. Yes, it is.

13 Q. If asked the same questions today as are
14 contained in that document, would your answers be
15 the same or substantially the same?

16 A. Yes, they would.

17 Q. And are you the same Mr. Jerry Murbarger
18 who prepared and caused to be filed what's been
19 designated as ATXI Exhibit 6.0, the rebuttal
20 testimony of Jerry Murbarger filed on e-Docket
21 September 18th of this year?

22 A. Yes, I am.

23 Q. Do you have any corrections to that
24 testimony?

1 A. No, I do not.

2 Q. Is all of the information contained
3 therein true and accurate to the best of your
4 information and belief?

5 A. Yes.

6 Q. And if asked the same questions as are
7 contained therein, would your answers be the same
8 today?

9 A. Yes, they would.

10 MR. DEARMONT: I have no further questions
11 for Mr. Murbarger and would move for the admission
12 of Exhibits 3.0 and 6.0 subject to his
13 cross-examination.

14 JUDGE ALBERS: All right. I will rule
15 admissibility following the cross-examination.

16 Mr. O'Brien, would you like to go first?

17 MR. O'BRIEN: That's fine.

18 CROSS-EXAMINATION

19 QUESTIONS BY MR. O'BRIEN:

20 Q. Mr. Murbarger, my name is Joe O'Brien.
21 I don't believe we have met.

22 Where are you physically?

23 A. Actually I'm in Branson, Missouri.

24 Q. Okay. Just a few questions for you.

1 Can you hear me all right?

2 A. Yes, I can.

3 Q. Okay. You filed rebuttal testimony

4 talking about a perhaps necessary deviation from

5 the Commission approved route of the Pana to Mt.

6 Zion route; is that correct?

7 A. That is true.

8 Q. Okay. And this is a route that would be

9 brand new that does not have any Ameren or ATXI

10 structures on it at the present time; is that

11 correct?

12 A. I believe that is correct, yes.

13 Q. And this is a route that was approved in

14 the second order on rehearing entered by the

15 Commission?

16 MR. DEARMONT: I object. I think that

17 misstates his testimony.

18 MR. O'BRIEN: Sorry, what?

19 MR. DEARMONT: That misstates his testimony.

20 MR. O'BRIEN: Okay. I will allow him to

21 clear it up if he wants to.

22 MR. DEARMONT: Sure.

23 MR. O'BRIEN: That's fine.

24 Q. The route we are talking about here,

1 the Pana to Mt. Zion, was that approved in the
2 second order on rehearing or the first order on
3 rehearing or perhaps both?

4 JUDGE ALBERS: Do you follow the question,
5 Mr. Murbarger?

6 A. I'm -- I believe it was on the second
7 order, but I'm not positive of that.

8 Q. Sorry. I couldn't hear your reply.

9 A. Sorry. I believe that was on the second
10 order but I'm not --

11 Q. Okay. I believe that's correct, yes.

12 But this would not change any physical
13 property that currently exists of ATXI; is that
14 correct?

15 I mean, you are not moving something that
16 already exists; it would just be a deviation for
17 the new construction; is that right?

18 MR. DEARMONT: I guess I will object as
19 being vague and ambiguous. Sorry, I don't
20 understand. Maybe you could rephrase for us here.

21 Q. Well, the crux of the question is you
22 are not moving something that's already been built;
23 you are not deviating on a route from something
24 that's already been built, but this is going to be

1 new construction; is that correct?

2 A. That is correct. This is all new
3 construction.

4 Q. And the only utility involved in this is
5 ATXI; is that correct?

6 A. Yes.

7 Q. Okay.

8 MR. DEARMONT: This being what?

9 MR. O'BRIEN: Pardon?

10 MR. DEARMONT: This being what?

11 MR. O'BRIEN: The proposed transmission
12 line, the segment between Pana and Mt. Zion.

13 MR. DEARMONT: Thank you.

14 Q. Okay. In your rebuttal testimony you
15 estimate that the proposed modification cost will
16 be about \$58,320,000; is that correct?

17 A. I -- yes, yes, in the rebuttal it is
18 58,320,000.

19 Q. And was that figure adjusted at all
20 because of easements that might be required now
21 that you may have to deviate from the route, or is
22 that basically the same as the original estimate?

23 A. This estimate included the adjustment
24 that ATXI made around the Conservation District.

1 Q. Okay.

2 A. Including, including real estate and all
3 materials.

4 Q. At the present time the property that
5 would be affected by the deviation, is it under
6 negotiation as far as negotiating easements at this
7 point?

8 MR. DEARMONT: Object and state that that
9 question appears to be outside the scope of
10 Mr. Murbarger's testimony.

11 Q. Well, my only question is have you made
12 any attempts yet to try to acquire the property?

13 MR. DEARMONT: Sure.

14 A. That would be Mr. Trelz --

15 MR. DEARMONT: We can answer that.

16 MR. O'BRIEN: That's fine.

17 Q. So at the present time you would not,
18 you would not really be the witness to answer
19 whether, what is going on with the negotiations,
20 whether you may have to go to eminent domain; you
21 are not the proper witness to answer that; is that
22 correct?

23 MR. O'BRIEN: Okay?

24 MR. DEARMONT: That's fine.

1 A. That is correct.

2 Q. But you were not able to secure an
3 easement from the Conservation District; is that
4 correct?

5 A. Again, that would be a Mr. Trelz
6 question.

7 Q. Okay.

8 A. I'm not sure where he is at on that.

9 MR. O'BRIEN: Okay. Well, I have no further
10 questions for you, then, sir. Thank you.

11 A. Thank you.

12 MR. O'BRIEN: We will reserve.

13 JUDGE ALBERS: All right. Mr. Sagone, you
14 indicated you have five or sorry, about five
15 minutes of cross for Mr. Murbarger.

16 Is that still the case?

17 MR. HARVEY: I think we have one question
18 for Mr. Murbarger.

19 CROSS-EXAMINATION

20 QUESTIONS BY MR. HARVEY:

21 Q. This is Matt Harvey. Mr. Murbarger, I
22 think we have met before once. I just have one
23 question for you.

24 It is your testimony, is it not, that the

1 \$56 million approximate cost you quoted does not
2 include any increases in easement price that might
3 be occasioned by the deviation?

4 A. The 58 million that I talked about
5 would include all real estate costs, all material
6 costs, all labor costs.

7 Q. Could I -- just let me clarify that.
8 You indicated that there is a -- page 3, line 53 of
9 your testimony.

10 A. Line 53?

11 Q. Yes. Correct. It says this does not
12 take into account real estate acquisition costs if
13 assumed such costs to be are equal to the proposed
14 route?

15 A. That is true, but that is true on this
16 line item. The overall cost between the Commission
17 ordered route and the ATXI deviated route, all real
18 estate costs would be assumed the same.

19 Q. Assumed the same, and you don't know for
20 a fact that they are?

21 A. That I do not.

22 MR. HARVEY: All right. That's all that I
23 have for you. Thank you, sir.

24 JUDGE ALBERS: Do you have any redirect?

1 MR. DEARMONT: Just two or three follow-up
2 clarifying questions.

3 REDIRECT EXAMINATION

4 QUESTIONS BY MR. DEARMONT:

5 Q. Can you hear me okay, Mr. Murbarger?

6 A. Yes, I can.

7 Q. Okay. Mr. O'Brien asked you about the
8 estimated cost of ATXI modification.

9 Do you remember that line of questioning?

10 A. Yes.

11 Q. Okay. I think you responded with a \$58
12 million figure, correct?

13 A. Correct.

14 Q. Okay. I just want to be clear that that
15 that's the estimated cost of the route from Pana to
16 Mt. Zion utilizing this modification, right, the
17 entirety of the route including the MCCD
18 modification?

19 A. That is correct.

20 Q. It is not just the modification itself.
21 That modification at least from a construction
22 perspective is about \$600,000, right?

23 A. That is correct. The \$58 million is
24 total line cost with deviation between Pana and Mt.

1 Zion.

2 Q. And as contained in your testimony, the
3 cost of the modification itself from a construction
4 perspective is about \$600,000?

5 A. That is correct, \$600,000 for the two
6 additional foundation or structures.

7 MR. DEARMONT: Okay. I have no further
8 questions. Thank you, Jerry.

9 JUDGE ALBERS: Any recross?

10 MR. O'BRIEN: No. Thank you.

11 JUDGE ALBERS: Mr. Harvey, any recross?

12 MR. HARVEY: Thank you. Nothing. Thank
13 you, your Honor.

14 JUDGE ALBERS: Any objection, then, to the
15 admission of Mr. Murbarger's testimony?

16 MR. O'BRIEN: I have none.

17 JUDGE ALBERS: All right. Hearing no
18 objection, then, ATXI Exhibits 3 and 6 are
19 admitted. Thank you Mr. Murbarger.

20 (ATXI Exhibits 3 and 6 admitted.)

21 A. Thank you.

22 MS. RUST: At this time ATXI would like to
23 call their next witness, Rick Trelz to the stand.

24 (Whereupon Rick Trelz took the stand.)

1 DIRECT EXAMINATION

2 QUESTIONS BY MS. RUST:

3 Q. Good morning.

4 A. Good morning.

5 Q. Can you state your name for the record?

6 A. My name is Rick Trelz, last name is
7 spelled T-R-E-L-Z.

8 Q. And do you have before you what's marked
9 as ATXI Exhibit 1.0, the direct testimony of Rick
10 Trelz filed on e-Docket on August 26th of 2014?

11 A. Yes, I do.

12 Q. And is that accompanied by Exhibits 1.1,
13 1.2, 1.3 and 1.4?

14 A. Yes.

15 Q. And were these exhibits prepared by you
16 or under your direct supervision?

17 A. Yes, they were.

18 JUDGE ALBERS: Let me -- you were previously
19 sworn, correct?

20 THE WITNESS: Yes, I stood up.

21 JUDGE ALBERS: Just for the record, for the
22 transcript.

23 THE WITNESS: Yes, I was sworn.

24 JUDGE ALBERS: Was 1.1 revised?

1 MS. RUST: Oh, yes, for the map. So do we
2 have the revision for 1.1?

3 MR. DEARMONT: Let's go off the record for
4 one minute, if we may.

5 JUDGE ALBERS: Sure. Off the record.

6 (Discussion off the record.)

7 Q. Is it your understanding that Exhibit
8 1.1 has been revised?

9 A. Yes.

10 Q. And do you have before you the revised
11 Exhibit 1.1?

12 A. I do.

13 Q. So you have revised Exhibit 1.1, Exhibit
14 1.2 and Exhibit 1.3 and Exhibit 1.4?

15 A. Yes.

16 Q. And I will ask again. These exhibits
17 were prepared by you or under your direct
18 supervision?

19 A. Yes.

20 Q. So for your direct testimony, if I asked
21 you the same questions today would your answers be
22 the same?

23 A. They would.

24 Q. Do you also have before you what is

1 marked as Exhibit 4.0?

2 A. I do.

3 Q. Entitled the Rebuttal Testimony of Rick
4 Trelz filed on E-Docket on September 18th 2014?

5 A. Yes.

6 Q. Was this exhibit prepared by you or
7 under your direct supervision?

8 A. Yes, it was.

9 Q. And do you have corrections to this
10 exhibit?

11 A. I have one correction that I would like
12 to make. On line 287, I would ask that two words
13 be deleted. Those two words are "of calculation".
14 So once the words are deleted, the sentence
15 beginning at 287 would read, "for damage to the
16 remainder for any revised offers made."

17 Q. Okay. So for your rebuttal testimony
18 subject to that correction if I asked you the same
19 questions in your rebuttal testimony today would
20 your answers be the same?

21 A. They would.

22 Q. Is the information contained in your
23 direct testimony and its exhibits and your rebuttal
24 testimony true and correct to the best of your

1 knowledge and belief?

2 A. They are.

3 MS. RUST: At this time, your Honor, I would
4 move for the admission of ATXI Exhibits 1.0,
5 Exhibit 1.1 revised, Exhibit 1.2, Exhibit 1.3, 1.4
6 and ATXI Exhibit 4.0.

7 JUDGE ALBERS: All right. Thank you. I
8 will rule on the admissability following any
9 cross-examination.

10 Is Mr. Trelz tendered for cross?

11 MS. RUST: He is.

12 JUDGE ALBERS: All right. Mr. O'Brien?

13 CROSS-EXAMINATION

14 QUESTIONS BY MR. O'BRIEN:

15 Q. Mr. Trelz, how are you?

16 A. Good morning, Mr. O'Brien.

17 Q. Is it your opinion that -- in this we
18 are talking about the Mt. Zion Pana segment now,
19 okay, not -- just focus in on that.

20 A. Yes, sir.

21 Q. -- that it would be necessary or that
22 the judge should simultaneously recommend to the
23 Commission an order that would amend the
24 certificate that was originally passed to include

1 the deviated, the required deviation because of not
2 being able to go through the Conservation
3 District's property?

4 Do you think it is necessary in this
5 proceeding for the judge to include that deviation?

6 MS. RUST: Your Honor, I'm going to object
7 to the extent he is calling for a legal conclusion
8 on whether an amended certificate is necessary.

9 MR. O'BRIEN: Well, okay. It is Mr. Trelz's
10 rebuttal testimony. The reference that I have here
11 IS lines 30 to 33. He made that statement in his
12 testimony that the judge should amend the original
13 certificate to recognize or authorize the
14 deviation.

15 Q. Is that correct?

16 A. That would be my recommendation, and
17 that is one of the recommendations that
18 Mr. Rockrohr had presented in his testimony. Not
19 only that the certificate be amended, but also the
20 eminent domain authority be granted at the same
21 time.

22 Q. Do you know, have landowners along the
23 deviated route been notified of the proposed
24 deviation?

1 A. Yes, they have.

2 Q. They have. Okay.

3 Do you know, have the landowners from Pawnee

4 to Mt. Zion been notified of the deviation?

5 A. You mean Pana to Mt. Zion?

6 Q. I think it probably means Pana, yes.

7 A. Okay. So the question is do I know --

8 Q. Have they been notified?

9 A. All of the landowners?

10 Q. Yeah.

11 A. Yes, they would have been notified.

12 Q. Okay.

13 JUDGE ALBERS: Sorry, just so I am clear,

14 notified of the deviation?

15 MR. O'BRIEN: Yeah.

16 A. Oh, okay. Yeah, I guess I

17 misunderstood. So --

18 Q. Have they been notified of the request

19 for a deviation from the certificated route?

20 A. No, they have not because it has no

21 impact on their property.

22 Q. They're not involved?

23 A. That is true.

24 Q. Okay. Only the landowners who would be

1 impacted have been notified?

2 A. That is correct.

3 Q. Okay. Now, according to your rebuttal

4 testimony there were four landowners from which you

5 were seeking voluntary easements.

6 How many of those have you secured?

7 MS. RUST: Do you have a line reference?

8 A. What line item are you referring to?

9 Q. 108 and 109.

10 JUDGE ALBERS: Again, this just pertains to

11 the deviation. Okay.

12 A. Okay. Sorry. Go ahead and ask your

13 question now.

14 Q. How many landowners are involved in the

15 deviation?

16 A. There are four.

17 Q. Four. Okay. Have you, at this time,

18 secured easements, voluntary easements from any of

19 them?

20 A. We have secured a voluntary easement

21 from one.

22 Q. From one. Okay.

23 Are negotiations continuing with the other

24 three?

1 A. Yes, sir.

2 Q. Do you have any idea whether they might
3 be successful?

4 How is it going I guess is what we're
5 saying?

6 A. Well, as my rebuttal testimony
7 indicates, you know, we anticipate reaching an
8 agreement with one of the other landowners and a
9 third landowner. His attorney is reviewing some of
10 the easement language. So I'm optimistic that we
11 can come to an agreement.

12 Q. If not, are you asking in this
13 proceeding that you be granted eminent domain power
14 for the one that you think you may not be able to
15 reach agreement with voluntarily?

16 A. I'm not an attorney. I have never gone
17 to law school. That would require a legal
18 interpretation.

19 Q. Okay. The modified route, would it have
20 any portion of it that would cross the Conservation
21 District land?

22 A. No.

23 Q. Totally, poles and lines --

24 A. That's correct.

1 Q. -- would be off?

2 A. That's correct.

3 Q. Now, the intervenors that I represent,
4 are you familiar with all three of our clients?

5 A. I'm familiar with their property and how
6 the line crosses their property, yes.

7 Q. Now, what width easement are you
8 seeking, 150?

9 A. One hundred fifty feet, yes.

10 Q. Now, the offers that you have made so
11 far are limited to the property in that 150 feet;
12 is that correct?

13 A. The offers we have made so far are based
14 on third-party independent licensed real estate
15 appraisals. The appraisers were provided a copy of
16 ATXI standard easement. The standard easement
17 provides some additional rights such as ingress,
18 egress, control of vegetation, temporary working
19 space if it is reasonable. So the offers that we
20 have made would include all of those rights as
21 well.

22 Q. Okay. You basically just mentioned two
23 or three things that the easement would include
24 outside of the property.

1 Is there any other thing that you are -- I
2 mean ingress, egress, vegetation control, what was
3 the other one?

4 A. Temporary reasonable working space
5 adjacent to the easement during construction.

6 Q. Is there anything else that you would be
7 asking for, for ATXI to be allowed to do outside of
8 the 150 foot easement?

9 MS. RUST: I'm going to object to -- for any
10 landowner, for your specific landowners or if you
11 could clarify your question.

12 MR. O'BRIEN: Well, we can take them one by
13 one if you want to.

14 Q. Would that --

15 MS. RUST: And one further objection. As
16 far as individual landowner negotiation, we are
17 proffering Ms. Sloan. That is more within the
18 scope of her testimony.

19 MR. O'BRIEN: Sorry?

20 MS. RUST: Mrs. Sloan, she is dealing with
21 the individual landowner negotiations. She has
22 more of the details of the individual negotiations.

23 Q. Well, okay. As regard to the Liehr
24 property, are you asking for anything outside the

1 easement itself other than the three items that you
2 have just mentioned; ingress, egress, reasonable
3 construction area, vegetation removing?

4 A. Not that I am aware of, Mr. O'Brien, but
5 again, Ms. Sloan can confirm that when she comes up
6 here, but I'm not aware.

7 MR. O'BRIEN: Is she the proper person on
8 all three of these properties?

9 MS. RUST: For the details of negotiations.

10 MR. O'BRIEN: All three of them?

11 MS. RUST: Yes.

12 Q. Okay. Would she be the proper one to
13 ask if in the future one of these landowners wants
14 to build a structure, say a grain bin, silo, shed,
15 cattle confinement, any farm structure?

16 Would she be the proper one to ask as to
17 whether the terms of this easement would preclude
18 them from doing that without company permission?

19 A. No, that -- a lot of the examples you
20 used may require a legal opinion, but the easement
21 that ATXI is securing, it is 150 foot wide
22 permanent easement. The landowner still owns the
23 underlying fee simple in that easement strip as
24 well as the adjoining property. They can make

1 other uses of not only the adjoining property but
2 the easement property. For example, they can farm,
3 they can hunt, they can have access.

4 Now, if they want to do something that might
5 somehow violate a safety concern or compromise our
6 ability to safely operate and maintain the line,
7 then that would need to be vetted through our
8 transmission line design group because they know
9 the codes and safety requirements much better than
10 I.

11 Q. For example, there would probably be a
12 problem building a structure where height would get
13 too close to the line; is that correct?

14 A. Such as?

15 Q. I'm sure there is a, there is a standard
16 as to how close a structure can be to the line
17 itself.

18 I mean, you can maybe build something that
19 is ten foot tall but you couldn't build something
20 100 feet tall?

21 A. The easement itself doesn't preclude a
22 landowner from building structures. With respect
23 to specifics, I mean, we would have to know the
24 specifics of what you are talking about, and that

1 would have to be reviewed by our engineers.

2 Q. In general how close can a structure be
3 to the line? Is there a standard?

4 A. As long as it's outside of the easement
5 strip, that's what the, that's what the easement
6 prohibits, structures within the 150 foot wide
7 strip.

8 Q. So there could not be a structure built
9 inside the easement?

10 A. Oh, yes, that is true.

11 Q. Okay?

12 A. That is true.

13 Q. So first of all, that would be
14 precluded?

15 A. Yes.

16 Q. Outside the strip it may or may not be
17 precluded depending upon what they might want to
18 build?

19 A. Yeah, it would have to be looked at.
20 We'd have to know specifics, engineering would have
21 to review it.

22 Q. If you know, are there any restrictions
23 on aerial crop dusting or things?

24 How close can you get an airplane to these

1 lines legally?

2 A. I do not know that.

3 Q. Don't know?

4 A. I'm not an attorney.

5 Q. Okay. Pretty sure, though, an airplane
6 couldn't fly under one, right?

7 A. I wouldn't recommend it. I wouldn't put
8 it past them, though.

9 Q. Okay. Okay. And you've stated, I
10 believe your testimony was with regard to the
11 offers that have been made, the proposals that have
12 been made to these clients so far, it is limited to
13 the 150-foot easement itself.

14 You said the appraiser that you are using
15 has not been outside to look at possible
16 restrictions on other uses or you are just talking
17 about the 150; is that correct?

18 A. I'm talking about the standard easement
19 document, the terms and conditions contained in it
20 which would include ingress, egress, vegetation,
21 temporary working space.

22 Q. So roughly the three things beyond the
23 150 feet itself?

24 A. That's the three major ones that come

1 to mind.

2 Q. Three major ones.

3 Okay. Now, the Liehrs received a copy of an

4 appraisal from an Illinois licensed appraiser; is

5 that correct?

6 A. They should have, yes.

7 Q. Okay. The Jones and Hoewings, however,

8 did not receive such an appraisal; is that

9 correct?

10 A. Not to my knowledge, but I would defer

11 to Ms. Sloan to address that.

12 Q. She would be the proper person to ask

13 that?

14 A. Yes.

15 MR. O'BRIEN: Okay. That's all that I have.

16 Thank you.

17 A. Okay.

18 JUDGE ALBERS: And Mr. Sagone or Mr. Harvey,

19 do you have any questions for Mr. Trelz?

20 MR. SAGONE: Thank you.

21 CROSS-EXAMINATION

22 QUESTIONS BY MR. SAGONE:

23 Q. Mr. Trelz, my name is John Sagone. I

24 just have a few short questions for you.

1 A. Okay.

2 Q. I would ask you first to turn to page 4
3 of your rebuttal testimony.

4 A. Okay. I'm there.

5 Q. Starting around, let's see here, line 83
6 you state there that in its brief on exceptions
7 ATXI informed the Commission that if it could not
8 obtain rights to cross the MCCD parcels, that it
9 would present a significant obstacle to completion
10 of the approved route.

11 Do you see that there?

12 A. I do.

13 Q. Now, the brief on exceptions that you
14 referred to there, is that the brief on exceptions
15 on rehearing that was filed in docket 12-0598 on
16 January 29th of this year?

17 A. I believe that is correct. I don't have
18 that document with me, but I did review it over the
19 weekend. If you look at the bottom of page 5 of
20 16, there is a footnote that indicates that date.
21 So I would say that's a true statement.

22 Q. Okay. And then the Commission, in
23 docket 12-0598, entered its second order on
24 rehearing on February 20th of this year; is that

1 correct?

2 A. That is the date that I recall, yes.

3 Q. Now, in this docket ATXI is not asking
4 for anything but Section 8-509 authority; is that
5 correct?

6 A. That is correct.

7 Q. And ATXI is not asking for Section 8-509
8 authority with respect to the landowners along what
9 you refer to as, I will quote, ATXI's modification
10 of this approved route?

11 A. That is correct.

12 Q. So in the absence of eminent domain
13 authority, a landowner can request whatever price
14 he chooses for an easement; is that correct?

15 A. Yes, they can. I mean, all of the land
16 owners can request what they think the easement
17 payment should be, and in this case, yes, that
18 would be true.

19 Q. Okay. They can decline to convey an
20 easement at all; is that correct?

21 A. Yes, just like the Macon County
22 Conservation District did, they can decline.

23 MR. SAGONE: Thank you, Mr. Trelz. We have
24 nothing further.

1 JUDGE ALBERS: Did you have any redirect?

2 MR. DEARMONT: May we have just two or three
3 minutes to confer with Mr. Trelz?

4 JUDGE ALBERS: Sure.

5 MR. DEARMONT: Thank you.

6 (A break was taken.)

7 MS. RUST: Just have a couple questions on
8 redirect.

9 JUDGE ALBERS: All right. We are back on
10 the record, then.

11 REDIRECT EXAMINATION

12 QUESTIONS BY MS. RUST:

13 Q. Under cross-examination you mentioned
14 that in this proceeding ATXI is just seeking
15 eminent domain authority under 8-509, correct?

16 A. That is correct. However, my
17 recommendation, and it's documented on page 7 of 16
18 of my rebuttal testimony, is that I agree with
19 Mr. Rockrohr's suggestion that one of the avenues
20 that's available to the Commission would be to
21 grant not only the eminent domain authority but
22 also to simultaneously approve or amend the
23 certificate in Section 8-503 of the Order that was
24 granted in docket 12-0598 to, to amend and approve

1 the ATXI modification that avoids any of the Macon
2 County Conservation District's properties.

3 JUDGE ALBERS: Okay. Ms. Rust, if you have
4 any other comments, could you please speak up?

5 MS. RUST: Sorry.

6 JUDGE ALBERS: Maybe if you could put the
7 microphone between you and Mr. Trelz, that might
8 help staff here.

9 MS. RUST: Just speaking to him over here.
10 I will try not to do that.

11 I have nothing further.

12 JUDGE ALBERS: All right. Any recross?

13 RECROSS-EXAMINATION

14 QUESTIONS BY MR. O'BRIEN:

15 Q. The only recross that I would have is I
16 asked you a couple of questions, and you said well,
17 I'm not an attorney and really couldn't render a
18 legal opinion.

19 So that is your desire; would you like to
20 see that done, but you don't legally know whether
21 that can be done or not in this matter; is that
22 correct?

23 A. That is true. I'm just agreeing with
24 Mr. Rockrohr's --

1 Q. Yeah. I just wanted to clear that up.

2 MR. O'BRIEN: That's fine. That's all that

3 I have. Thank you.

4 JUDGE ALBERS: Okay. Any objection, then,

5 to Mr. Trelz's testimony?

6 MR. O'BRIEN: I have none.

7 MR. SAGONE: None from staff, your Honor.

8 JUDGE ALBERS: All right. Then ATXI

9 Exhibits 1, 1.1 Revised, 1.2, 1.3, 1.4, and 4.0 are

10 admitted.

11 (ATXI Exhibits 1.0, 1.1 Revised,

12 1.2, 1.3, 1.4 and 4.0 admitted.)

13 JUDGE ALBERS: Thank you, Mr. Trelz.

14 THE WITNESS: Thank you.

15 MR. DEARMONT: And last but not least ATXI

16 would call to the stand Ms. Amanda Sloan.

17 JUDGE ALBERS: Ms. Sloan, you were

18 previously sworn?

19 THE WITNESS: I was.

20 JUDGE ALBERS: Thank you.

21 (Whereupon Amanda Sloan took the stand.)

22 DIRECT EXAMINATION

23 QUESTIONS BY MR. DEARMONT:

24 Q. Good morning.

1 A. Good morning.

2 Q. How are you?

3 A. I am well.

4 Q. Good. Are you the same Amanda Sloan

5 that prepared and caused to be filed direct

6 testimony and supporting exhibits labeled ATXI

7 Exhibits 2.0 through 2.3?

8 I believe those documents were filed on

9 e-Docket on August 26th of this year.

10 A. Yes.

11 Q. Do you have any corrections to that

12 testimony or any of those exhibits?

13 A. We do have a correction to make.

14 Q. Please explain.

15 A. In 2.3, part G I believe, the overall

16 map to be amended to include the routing of the

17 transmission line as well as a plat addition. We

18 filed one plat regarding one parcel at issue, and

19 we need to include a second to include the other

20 parcel.

21 Q. Okay. Let me drill down on that for a

22 second, if I can. 2.3, part G is the landowner

23 specific narrative that pertains to Mr. and

24 Mrs. Liehr, correct?

1 A. Correct.

2 Q. Okay. And the map that was filed as an
3 attachment to that narrative, what does it look
4 like as compared to what the map should look like?

5 A. It was missing a red line that runs
6 through the middle of the property for the duration
7 of the distance across the property.

8 Q. So the red line went halfway across
9 their property and stopped when in reality it
10 should have been depicted as continuing across
11 their property?

12 A. Correct. I would also like to note that
13 this particular map is not a map that is for
14 property owner use, it is for our filing here with
15 the Commission.

16 Q. Not generally provided to landowners
17 outside of the context of this case?

18 A. Correct.

19 Q. Okay. I understand that revision.

20 Let's talk about the plat. What was
21 provided as compared to what we need to provide?

22 A. The plat, the plats as provided to the
23 property owner through the negotiation process were
24 correct. In our filing with the Commission we are

1 missing the second portion of the plat.

2 Q. So there is two plats?

3 A. Correct.

4 Q. Okay. We provided one of the plats but

5 not the other?

6 A. Correct.

7 Q. But it is your understanding that the

8 Liehrs have, in their possession, both of the

9 plats?

10 A. That is correct.

11 Q. Okay. Do you recall if that was

12 attached to their testimony or provided in this

13 case at all?

14 A. It is attached to their testimony.

15 Q. Okay. I think I understand those

16 corrections. Thank you.

17 Any other corrections in ATXI Exhibit 2.0 or

18 any of your direct exhibits?

19 A. No.

20 Q. Is the information contained therein

21 subject to that amendment true and accurate to the

22 best of your knowledge?

23 A. Yes.

24 Q. Okay. If asked the same questions as

1 contained therein, would your answers be the same
2 or substantially similar today?

3 A. Yes.

4 Q. And are you the same Amanda Sloan that
5 prepared and caused to be filed ATXI Exhibit 5.0
6 and supporting Exhibit 5.1?

7 And those documents were filed on E-Docket
8 on September 18th of this year.

9 A. Yes.

10 Q. Okay. For the record, 5.1 is a Liehr
11 appraisal, and that document has been redacted,
12 correct?

13 A. Correct.

14 Q. Do you have any corrections to that
15 testimony or that exhibit?

16 A. No.

17 Q. Okay. Was the information contained
18 therein true and accurate to the best of your
19 information and knowledge?

20 A. Yes.

21 Q. Okay. If asked the same questions as
22 were contained therein today, would your answers be
23 the same or substantially the same?

24 A. Yes.

1 MR. DEARMONT: I have no further questions
2 for Ms. Sloan. I would move for the admission of
3 ATXI Exhibits 2.0, 2.1, 2.2, 2.3, including parts A
4 through F, 5.0, and 5.1.

5 We also propose to file a revised part 2.3
6 G, and I move for admission of that subject to
7 being amended consistent with the explanation that
8 Ms. Sloan has provided today.

9 JUDGE ALBERS: Okay. Two questions. I
10 don't think, I didn't hear when you made your
11 motion 2.4.

12 MR. DEARMONT: You did not, but I would mark
13 and move for the admission of 2.4 as well.

14 Q. (By Mr. Dearmont:) And I don't know
15 that I discussed that with you, but 2.4 was an
16 exhibit contained -- well, let me make sure -- was
17 an exhibit attached to your direct testimony as
18 well, correct?

19 A. Yes.

20 MR. DEARMONT: Judge, you threw me off here.

21 JUDGE ALBERS: Sorry.

22 Q. Okay. That's a sample appraisal; is
23 that right?

24 A. Yes.

1 Q. Any correction --

2 A. Sorry.

3 Q. No. Okay. That's a sample aerial image
4 depicting preliminary structure locations, correct?

5 A. General exhibit, yes.

6 Q. That's a general exhibit. No
7 corrections to that?

8 A. No.

9 MR. DEARMONT: Okay. Sorry. Subject to
10 that, we would also move for the admission of
11 Exhibit 2.4.

12 JUDGE ALBERS: One more I have got. There
13 was a confidential and public version of 2.2,
14 correct, with the appraisal offers on it?

15 MR. DEARMONT: That is correct. It is
16 confidential, contains terms of negotiations to be
17 technical.

18 JUDGE ALBERS: Yes. I agree. All right. I
19 will rule on the admissibility following
20 cross-examination. Mr. O'Brien?

21 CROSS-EXAMINATION

22 QUESTIONS BY MR. O'BRIEN:

23 Q. Ms. Sloan, how are you?

24 A. I'm well. How are you?

1 Q. You were in the hearing room during all
2 of the testimony of Mr. Trelz; is that correct?

3 A. That is correct.

4 Q. And he referred two or three issues to
5 you that you would be the proper person to answer
6 some of those questions.

7 With regard to structures within the 150
8 foot easement, are you in agreement that the
9 landowners could not build any structure -- they
10 could farm but could not billed anything in that
11 150 foot easement; is that correct?

12 A. They cannot build a structure inside the
13 easement, that is correct.

14 Q. What could they build?

15 A. Well, your question, I believe,
16 specifically as worded contained a number of
17 examples.

18 Do you recall what they were?

19 Q. Well, okay. They couldn't build a
20 structure?

21 A. Correct.

22 Q. So I'm trying to think what they could
23 build that is not a structure.

24 A. I believe you specifically referenced a

1 cattle confinement. I don't know what you mean by
2 that, so --

3 Q. Well, could they fence the area in --

4 A. Certainly.

5 Q. -- to confine horses, confine cattle?

6 Now, what if your crews had to get inside?

7 A. Well, we have two options. If the
8 landowner knew ahead of time that they wanted to
9 put a fence in, we could certainly work with them
10 to put a gate in when they installed the fencing.
11 if -- which is also the same practice we would do
12 if the fence was there when we came through and did
13 construction.

14 In the future should they wish to fence, we
15 would also work through the same with them at that
16 time.

17 Q. Okay. Do you agree with Mr. Trelz when
18 he stated that the offers that have been made to
19 these clients deal totally with the value of the
20 land in the 150-foot easement strip?

21 MR. DEARMONT: I will object. I think that
22 that misstates somewhat Mr. Trelz's testimony but
23 --

24 Q. Okay. Well, then I'm not going to ask

1 you do you agree with his testimony.

2 What is your testimony with regard to the
3 offer -- the offers that have been made, what do
4 those offers include?

5 A. Well, as Mr. Trelz stated, the
6 appraisals that were performed on the property were
7 done by independent third-party appraisers. Those
8 appraisers took into consideration the location of
9 the line as it crosses the property as well as
10 property valuation in their arrival at the
11 appropriate price for the easement area.

12 Q. Now, there was a, I believe, appraisal
13 signed by a licensed appraiser that was given to
14 the Liehrs; is that correct?

15 A. Sorry. Are you asking did they receive
16 an appraisal?

17 Q. Yes.

18 A. Yes, they did.

19 Q. They were given an appraisal by an
20 Illinois licensed appraiser. The Joneses and
21 Hoewings however, received what they called a
22 fly-over unsigned appraisal; is that correct?

23 A. I believe that the Joneses and Hoewings
24 received their appraisal in a meeting at their

1 attorney's office in August, and there may be a
2 reference to that appraisal in their direct
3 testimony.

4 Q. So you believe that they also received a
5 signed appraisal?

6 A. I believe they received their
7 appraisal, that is true.

8 Q. Now, one last question. Are you
9 familiar with the order in the previous request for
10 eminent domain authority with regard to the Liehr
11 property?

12 A. Can you please be more specific?

13 Q. On page 18, the order states that or
14 refers to a line item for damage to property
15 outside of the easement area that should be
16 included in future offers even if the amount was
17 zero.

18 Are you familiar with that language?

19 A. I am familiar that there, that they
20 discussed it in an order, yes.

21 Q. Okay. The latest offer that they were
22 given doesn't include a line item for damage
23 outside. Do you know why?

24 A. It was an oversight when the calculation

1 sheet was prepared. It was in the appraisal, and
2 it is clearly stated as a line item in the
3 appraisal, and I believe that the Liehrs are aware
4 that no damage to the remainder was awarded in the
5 appraisal.

6 Q. Have they been provided with that, the
7 Liehrs?

8 Have the Liehrs been provided with that
9 revised -- you say it was an oversight, that it was
10 left out?

11 A. Correct.

12 Q. Okay. And has that been corrected?

13 A. No.

14 MR. O'BRIEN: Okay. That's all that I have.
15 Thank you.

16 JUDGE ALBERS: Mr. Sagone or Mr. Harvey, do
17 either of you have any questions for Ms. Sloan?

18 MR. HARVEY: Just a few, your Honor.

19 CROSS-EXAMINATION

20 QUESTIONS BY MR. HARVEY:

21 Q. Ms. Sloan, my name is Matt Harvey. I
22 represent the Commission staff in this proceeding.
23 I have what I hope will be fewer than ten questions
24 for you, so if you can just bear with me.

1 First of all, you are the contract land
2 staff project manager for the Illinois Rivers
3 Project as I understand it?

4 A. That is correct.

5 Q. In that capacity would it be fair to say
6 that you have become familiar with ATXI's policies
7 regarding easement acquisition?

8 A. I would say yes.

9 Q. Okay. Now, you prepared a number of
10 what you described as packets of documentation
11 specific to each owner of the unsigned properties,
12 correct?

13 A. Yes.

14 Q. And those packets include what you
15 describe as, and I quote, a narrative summary of
16 issues the landowner raised during negotiations
17 along with ATXI's efforts to address those issues?

18 A. Yes.

19 Q. Okay. Now, if I could ask you to turn
20 your attention to your Exhibit 2.3, part C, which
21 as I understand it, contains one such narrative
22 summary, correct?

23 A. I don't have the narrative with me.

24 Q. But you're sponsoring as part of your

1 testimony?

2 A. I am. I think the attorneys are

3 producing it.

4 Q. That would be helpful if they did.

5 Should I wait a second while they do that?

6 JUDGE ALBERS: Yes, please.

7 MR. DEARMONT: Mr. Harvey, you said part C?

8 MR. HARVEY: Part C, yes.

9 A. Okay.

10 MR. DEARMONT: Fire away.

11 Q. Okay. Now, this contains one such

12 narrative summary which purports to summarize

13 contract land staff dealings on behalf of ATXI with

14 people named Robert and Debbie, Debra Hoewing,

15 which I'm spelling H-O-E-W-I-N-G and am hoping I

16 don't do injustice to their name.

17 Is that correct?

18 A. That is correct.

19 Q. And you know this narrative to be true

20 and accurate?

21 A. That is correct.

22 Q. Now, the narrative states that with

23 respect to line routing, the Hoewings have

24 expressed an opinion that a portion of the line

1 should be located one half mile south of the
2 current location based on their belief that routing
3 across that corridor would affect fewer homes; is
4 that correct?

5 A. Yes.

6 Q. The narrative further states that the
7 Hoewings presented the land agent with a visual
8 representation of the routes they prefer in a
9 meeting on August 15, 2014.

10 Again, am I stating that fairly?

11 A. Yes.

12 Q. The narrative further states those
13 routes were not presented to the Commission in the
14 underlying CPCN proceeding;

15 Again, is that a fair statement of the
16 narrative?

17 A. That is correct.

18 Q. And when we say these routes, we are
19 referring to the routes preferred by the Hoewings?

20 A. That is correct.

21 Q. So finally the narrative states that
22 ATXI responded to the Hoewings and explained its
23 concerns about their route request which include
24 the scope of the reroute, the resultant delays and

1 the additional costs.

2 Is that a correct statement of the summary?

3 A. That is.

4 Q. And would it be fair to say -- I take
5 that back.

6 Would it be fair to conclude from this
7 summary that the Hoewings proposed a route
8 deviation and the company rejected it because it
9 was outside of the scope of the Commission
10 certificate?

11 MR. DEARMONT: I will object to that
12 compound question. Maybe, can you break that out,
13 Mr. Harvey?

14 MR. HARVEY: All right. I can do that. I
15 think she testified to it, but in the interest of
16 moving forward.

17 Q. Would it be fair to conclude from this
18 summary that the company rejected a route deviation
19 proposed by the Hoewings?

20 A. We did.

21 Q. And one of the reasons that the company
22 did this was because of the fact that if -- the
23 route wasn't presented to the Commission?

24 A. That is one of the reasons, not the

1 sole reason, and a property owner that would have
2 been affected by the suggestions that were made by
3 the Hoewings would not have -- did not, excuse me,
4 agree to the routes they were suggesting.

5 Q. Well, the answer to the question is yes?

6 A. Well, the answer was that was not the
7 only reason.

8 Q. Fair enough. It was, indeed, one of the
9 reasons?

10 A. Yes, sir.

11 MR. HARVEY: Thank you very much. That's
12 all that I have, and I thank you for your time, Ms.
13 Sloan.

14 A. Thank you.

15 JUDGE ALBERS: Do you have any redirect?

16 MR. DEARMONT: May I have 30 seconds? I
17 promise we will stay in the room this time.

18 (A break was taken.)

19 MR. DEARMONT: I have no questions on
20 redirect.

21 JUDGE ALBERS: All right. Any objection,
22 then, to Ms. Sloan's testimony?

23 MR. O'BRIEN: I have no further questions.

24 MR. HARVEY: None from staff.

1 JUDGE ALBERS: No objection?

2 MR. O'BRIEN: Pardon?

3 JUDGE ALBERS: No objection to --

4 MR. O'BRIEN: No objection.

5 JUDGE ALBERS: All right. ATXI Exhibit 2,
6 2.1, 2.2, both the confidential and proprietary
7 versions and confidential relates to landowner
8 negotiations -- two versions of that document exist
9 -- Exhibit 2.3, part A through F, Exhibit 2.3 part
10 G Revised, Exhibit 2.4, 5.0 and 5.1 are admitted.
11 (ATXI Exhibits 2.0, 2.1, 2.2 both
12 versions, 2.3 Parts A through F,
13 2.3 Part G Revised, 2.4, 5.0 and
14 5.1 admitted.)

15 JUDGE ALBERS: And do you have --

16 MR. DEARMONT: Thank you first of all.

17 JUDGE ALBERS: Do you have a rough idea when
18 we might see the G revised just so I --

19 MR. DEARMONT: Today or tomorrow.

20 JUDGE ALBERS: That's fine.

21 MR. DEARMONT: If we may, Judge, can I
22 suggest that we take maybe a ten minute break? It
23 looks like we are ahead of where we had scheduled
24 to be at this point. I think that we received some

1 discovery request responses from staff here
2 recently. We'd like an opportunity to review
3 those.

4 JUDGE ALBERS: That's fine. We'd all like a
5 ten-minute break, so we will recess for ten minutes
6 and come back at, let's just say 10:20.

7 (A break was taken.)

8 JUDGE ALBERS: Back on the record. We are
9 returning from our brief recess, and I believe, I
10 guess generally the staff witness goes last. I see
11 on the list that I have got that the staff witness
12 is next.

13 Is there any preference?

14 MR. SAGONE: We don't have a strong
15 preference, your Honor.

16 JUDGE ALBERS: Okay. Well, why don't we go
17 ahead and take Mr. O'Brien. You go ahead and call
18 your first witness then, and we will take it from
19 there.

20 MR. O'BRIEN: Okay. Mr. Liehr.

21 JUDGE ALBERS: Mr. Liehr, you were
22 previously sworn, correct?

23 THE WITNESS: Yes.

24 JUDGE ALBERS: Thank you.

1 (Whereupon Roger Liehr took the witness stand.)

2 DIRECT EXAMINATION

3 QUESTIONS BY MR. O'BRIEN:

4 Q. Mr. Liehr, just for the record would you
5 please state your name and your address?

6 A. Roger Liehr, L-I-E-H-R, 38708 State
7 Highway 107, Chambersburg, Illinois, 62323.

8 Q. And are you the same Roger L. Liehr that
9 has previously filed testimony in this proceeding?

10 A. Yes.

11 JUDGE ALBERS: Mr. Sagone and Mr. Harvey,
12 can you hear Mr. Liehr?

13 MR. HARVEY: Just barely, your Honor.

14 JUDGE ALBERS: Can you sit closer to the
15 mic?

16 Go ahead.

17 Q. Has that testimony been marked as
18 Intervenor Liehr Exhibit 1.0?

19 A. Yes.

20 Q. And you also have attachments, Exhibit
21 1.1 and 1.2; is that correct?

22 A. Yes.

23 Q. Okay. And if I were to ask you all of
24 those questions that are in your direct testimony

1 this morning, would your answers be the same or
2 substantially the same as in the four pages of your
3 direct testimony?

4 A. Yes.

5 Q. Do you have anything you need to amend
6 to your knowledge in that testimony?

7 A. No.

8 MR. O'BRIEN: I will tender for cross, then.

9 JUDGE ALBERS: All right.

10 MR. O'BRIEN: I will make a motion to admit
11 this after cross.

12 JUDGE ALBERS: That's fine.

13 MR. DEARMONT: I do have a few questions.

14 CROSS-EXAMINATION

15 QUESTIONS BY MR. DEARMONT:

16 Q. Mr. Liehr, good morning. How are you?

17 A. All right.

18 Q. We meet again.

19 A. Yes.

20 Q. Yeah. As I understand it, you have not
21 been able to reach an agreement with ATXI about
22 money or about easement terms, right?

23 A. Yes.

24 Q. Okay. And by money, you understand what

1 I mean; that would include crop damages, price per
2 acre, any damage to the remainder.

3 Understand what I mean by that reference?

4 A. Yes.

5 Q. And by terms, I mean all of the other
6 terms that are contained in the easement itself or
7 maybe a confidential settlement agreement.

8 Do you follow me?

9 A. Well, yeah. Go ahead.

10 Q. First I want to talk to you about money,
11 and then we are going to talk about terms, okay?

12 You understand, sitting here today, that
13 ATXI's offer of compensation does not include any
14 money for damage to the remainder of your property,
15 right?

16 A. That's the way I understand it.

17 Q. And you disagree with that assessment?

18 A. Yes.

19 Q. Okay. But right or wrong, you're aware
20 of it; you understand our position?

21 A. Yes, and hunting rights.

22 Q. Those are some terms. We are going to
23 talk about those in just a minute, okay?

24 Let's talk about money right now if that's

1 okay with you.

2 How long have you known that there's been
3 this disagreement about money?

4 In other words, that you want damage to the
5 remainder and that we weren't willing to pay damage
6 to the remainder, how long have you known that?

7 A. Well, I really can't answer that
8 because so much of that stuff went to the guy
9 buying the land off of, we didn't find out any of
10 the information.

11 Q. Mr. Wagner, is that who that was?

12 A. Yes, it was.

13 Q. But is it fair to say that it has been
14 at least a couple of months at least since that
15 last hearing or shortly thereafter?

16 A. Oh, yeah, yeah, probably.

17 Q. Okay. All right. Have you read the
18 appraisal that was given to you by ATXI?

19 A. I looked through it.

20 Q. Just to be clear, you are not willing to
21 accept our current money offer, right?

22 A. Well, they just sent another one the
23 other day and they lowered the price. No, I'm not.

24 JUDGE ALBERS: You said they lowered

1 the price?

2 A. Yes, they went back to what they

3 originally started with.

4 JUDGE ALBERS: Okay. I just didn't hear

5 you. That's fine.

6 A. Sorry. My sinuses are draining this

7 morning, and I'm hoarse.

8 Q. No problem at all.

9 A. I'm sorry.

10 Q. Okay. So if there was a new offer, you

11 don't accept that offer of money, right?

12 A. Not the lowered price, no.

13 Q. Right. Even if there was an offer

14 beforehand maybe that wasn't revised, you still

15 didn't accept that money, right?

16 A. No.

17 Q. Okay. You understand that one of the

18 issues in this case deals with whether ATXI gave

19 you a calculation sheet that showed any value for

20 damage to the remainder.

21 That's one of the things we are arguing

22 about, right?

23 A. Yes. Yeah.

24 Q. And you understand that you probably

1 heard this morning we agree that you have not
2 received a calculation sheet with that line on it,
3 right?

4 A. No.

5 Q. Okay. My question is if I were to give
6 you a new one today, a new calculation sheet that
7 had that line on it with a zero next to it but all
8 of the other money terms were the same, would you
9 be willing to accept that offer?

10 A. I'd sit down with my attorney and talk
11 about it.

12 Q. Okay. Maybe you just answered that, but
13 if our offer didn't go up a dollar from where we
14 sit today, would you consider that offer?

15 A. No.

16 Q. Okay. The damage to the remainder, I
17 don't want to put words in your mouth, but when I
18 use that term, I'm talking about any damage that
19 may exist to your property outside of the easement
20 area.

21 Is that consistent with your understanding?

22 A. Well, yeah.

23 Q. Okay. You have not put like a specific
24 dollar value on that damage to the remainder, have

1 you?

2 A. No.

3 Q. Okay. And you have not done any studies

4 about that or you have not paid anybody else to do

5 any studies about that?

6 A. No, no.

7 Q. As far as money is concerned, you have

8 not provided ATXI, my client, with any type of

9 formal counter offer, right?

10 You have not told us I need another \$30,000

11 or \$50,000 or \$7?

12 A. No, I have not. I thought maybe they'd

13 offer me that.

14 Q. Are you aware that as a result of this

15 case, the ICC isn't going to set a value that we

16 need to pay you for your property?

17 Are you aware of that?

18 A. Yes.

19 Q. And you are not a lawyer, right?

20 A. No.

21 Q. Okay. You are not a real estate agent?

22 A. No.

23 Q. Not an appraiser?

24 A. No.

1 Q. Okay. You farm for a living?

2 A. I'm a farmer.

3 Q. Probably harder than all three of those

4 other professions? No opinion?

5 A. No.

6 Q. Okay.

7 A. I don't know. Everybody got their

8 positions.

9 Q. Okay. All right.

10 I want to talk to you about -- so we talked

11 about money. I want to ask you a couple of

12 questions about terms now, okay?

13 You talked about hunting for example?

14 A. Yes.

15 Q. Okay. Will you agree with me that we

16 have provided you with some language, I think in a

17 confidential settlement agreement, that preserves

18 your ability to plant some vegetation inside of the

19 easement strip?

20 A. She talked about it one day over in

21 Mr. McNamara's office, about planting something,

22 but I don't know what it was.

23 Q. Okay. Well, let me ask you as you sit

24 here today, it is not your belief that you need to

1 keep the easement like clear cut, right?

2 A. I figured they would. That's what they
3 have done on other right of ways and under their
4 lines.

5 Q. Okay. But how about, like, I will say
6 alfalfa or barley, things of that nature; as you
7 sit here today do you understand that you could
8 plant items of that nature in the easement?

9 A. Yes, yes.

10 Q. And I don't know, what do you hunt out
11 there, deer?

12 A. Yes.

13 Q. Okay. For example, alfalfa or barley,
14 things like that from a deer hunting perspective,
15 that would be helpful, right, as opposed to just a
16 clear cut swath?

17 A. Oh, I am sure it would be, yes.

18 Q. You also have concerns with erosion,
19 right?

20 A. Yes, we do.

21 Q. If I remember your property correctly,
22 it is pretty terraced, isn't it?

23 A. Well, part of it. Where they want the
24 150 foot strip is not.

1 Q. Okay.

2 A. It has got a lot of young timber in it.

3 Q. Okay. About that timber, that's the

4 question that I have for you.

5 As you sit here today, it is your

6 understanding that we have agreed that when we, if

7 or when we cut those trees, that we're willing to

8 leave those stumps there, right?

9 A. (Nods head up and down.)

10 Q. Ms. Sloan told you that?

11 A. Yes.

12 Q. As far as erosion is concerned, that's

13 helpful?

14 As compared to ripping stumps out it is

15 helpful?

16 A. Well, I think it would be, yes.

17 And I have got a question. Are you going to

18 leave the tree tops scattered on top of the stumps?

19 Q. I do not know the answer to that.

20 A. I don't either.

21 Q. Do you understand that -- and I don't

22 know, but do you understand ATXI has given you a

23 confidential settlement agreement where we are

24 trying to address some of these issues like hunting

1 and like erosion for example?

2 A. Yeah.

3 Q. Have you talked about that with your

4 lawyer?

5 A. Yes, and Ms. Sloan.

6 Q. Did she -- okay. You have met with her

7 fairly recently?

8 A. Yes.

9 Q. Okay. You discussed some of these

10 topics, right?

11 A. Yes.

12 Q. And some of your concerns that you have

13 with the terms of our easements and what we plan to

14 do on your property?

15 A. Yes.

16 Q. Okay. And we have taken a crack at

17 providing you with some language to address those,

18 right?

19 A. Yes.

20 MR. DEARMONT: Okay. I thank you for your

21 time and continuing effort here. That's all of the

22 questions that I have for you right now.

23 A. Okay.

24 JUDGE ALBERS: I don't think staff reserved

1 any time for Mr. Liehr, but do you have any
2 questions?

3 MR. HARVEY: We do not, your Honor. Thank
4 you.

5 JUDGE ALBERS: All right. Do you have any
6 redirect?

7 MR. O'BRIEN: Just one point to clear things
8 up.

9 REDIRECT EXAMINATION

10 QUESTIONS BY MR. O'BRIEN:

11 Q. Mr. Liehr, in response to a question
12 from counsel, you said that if a new offer were to
13 be received with a different compensation figure, a
14 clarification perhaps of some of the terms, that
15 you would be willing to talk over I think you said
16 with your son that offer?

17 A. Mr. Ed --

18 Q. Okay.

19 A. -- McNamara. Sorry.

20 Q. I couldn't hear what you said.

21 A. Can't hardly talk. Sorry.

22 Q. So you are not saying under no
23 circumstances no matter what is offered that you
24 are not going to consider it; is that correct?

1 A. No, depends on what the offer is.

2 Q. All right. Okay. So I just wanted to
3 clarify that.

4 Your position as we sit here today is the
5 offer that you received so far just does not meet
6 your needs; is that correct?

7 A. No.

8 MR. O'BRIEN: Okay. That's all that I have.
9 Thank you.

10 JUDGE ALBERS: Any recross?

11 MR. DEARMONT: One question that will turn
12 into three, I'm sure.

13 RE CROSS-EXAMINATION

14 QUESTIONS BY MR. DEARMONT:

15 Q. You have something in front of you
16 today, right, you or your attorney, Mr. McNamara,
17 right?

18 You have a dollar amount we are willing to
19 pay, right?

20 A. (Nods head up and down.)

21 Q. And you have the terms that we are
22 currently offering to you, right?

23 A. Yes.

24 MR. DEARMONT: All right. That's the only

1 question that I have. Thank you for your time.

2 JUDGE ALBERS: Okay.

3 MR. O'BRIEN: I would move for the admission
4 of the direct testimony and the attached exhibits
5 which have been, I believe, marked as Intervenor
6 Liehr 1.0, 1.1 and 1.2.

7 JUDGE ALBERS: Any objection?

8 MR. DEARMONT: No objection.

9 JUDGE ALBERS: Hearing no objection then
10 Intervenor Liehr Exhibit 1.0, 1.1 and 1.2 are
11 admitted.

12 (Liehr Exhibits 1.0, 1.1 and 1.2
13 admitted.)

14 MR. O'BRIEN: Thank you.

15 JUDGE ALBERS: Thank you, Mr. Liehr.

16 THE WITNESS: Thank you.

17 MR. O'BRIEN: Okay. Who wants to go first?
18 (Whereupon Betty Jeanne Jones took
19 the stand.)

20 JUDGE ALBERS: Ms. Jones, you were
21 previously sworn?

22 THE WITNESS: Pardon?

23 JUDGE ALBERS: You were previously sworn in?
24 You were previously sworn in?

1 THE WITNESS: (Nods head up and down.)

2 JUDGE ALBERS: All right. Thank you. When
3 you do answer, please make sure to say yes or no to
4 any questions so the court reporter can get it.

5 THE WITNESS: It is hard to hear with that
6 blower.

7 DIRECT EXAMINATION

8 QUESTIONS BY MR. O'BRIEN:

9 Q. Would you please just state your name
10 and address for the record?

11 A. Okay. I'm Betty Jeanne Jones. My
12 address is 11880 Comthwaite Road, Macon, Illinois,
13 62544.

14 Q. And Mrs. Jones, have you previously
15 filed written testimony in this case which is, I
16 believe, marked as Intervenor Jones Exhibit 1.0?

17 A. I have.

18 Q. And attached to that testimony there are
19 I believe two exhibits, three exhibits marked as
20 Intervenor Jones 1.1, 1.2, and 1.3; is that
21 correct?

22 A. That's correct.

23 Q. Now, you were in the hearing room
24 previously, is that correct, when counsel made a

1 motion to have the offer calculation worksheet
2 redacted; in other words so that the public record
3 would not show the dollar amounts that those --
4 A. I have not been in a hearing.
5 Q. Okay. Well, as we started the
6 proceeding this morning --
7 A. Oh, okay.
8 Q. -- counsel asked that those amounts --
9 A. Oh, yes.
10 Q. -- which are at the present time of
11 public record --
12 A. Right.
13 Q. -- be redacted --
14 A. Exactly.
15 Q. -- as confidential --
16 A. I understand.
17 Q. -- only to you?
18 A. Yes.
19 Q. So you are aware that's --
20 A. Yes, uh-huh.
21 Q. -- we are going to do that with this
22 exhibit?
23 A. Okay.
24 Q. Your testimony consists of five pages,

1 and if you were to be asked those questions this
2 morning, would you answer them with the same
3 answers as are given in this written testimony?

4 A. With one correction on the date on page
5 5.

6 Q. Okay.

7 A. On line 93, I believe that date
8 September 13th should be September 11.

9 Q. Okay.

10 MR. DEARMONT: Sorry, can you --

11 A. It would not have been in the morning,
12 it was at our attorney's.

13 MR. O'BRIEN: Page 5, line 93.

14 MR. DEARMONT: Very good. Thank you.

15 A. It was not in the morning, it was at
16 the meeting with the attorney.

17 MR. O'BRIEN: She is revising the date and
18 time of that --

19 A. Basically.

20 MR. O'BRIEN: -- communication.

21 MR. DEARMONT: Very good. Thanks.

22 MR. O'BRIEN: Okay. Ready for cross.

23 MR. DEARMONT: I will defer to co-counsel.

24

1 CROSS-EXAMINATION

2 QUESTIONS BY MS. RUST:

3 Q. Good morning, Mrs. Jones.

4 A. Good morning.

5 Q. Like for Mr. Liehr's cross-examination,
6 I'd like to start with talking about the money, the
7 level of compensation that ATXI is offering you.

8 A. Uh-huh.

9 MR. SAGONE: Sorry. We are having trouble
10 hearing you on the phone.

11 MS. RUST: I will try to speak up. Sorry.

12 Q. If -- are you willing today to except
13 ATXI's offer of compensation as it currently
14 stands?

15 A. No.

16 Q. No. And would you agree that the major
17 reason that you are not willing to accept their
18 offer has to do with level of that compensation?

19 A. No.

20 Q. No, you wouldn't?

21 A. That's not the major reason.

22 Q. Okay. I have before me your response
23 to DR 1.02.

24 MS. RUST: And can I mark this as Cross

1 Exhibit No. 1?

2 (ATXI Cross Exhibit 1 marked for
3 identification.)

4 Q. And in that DR response ATXI is asking
5 you why you are not willing to offer or to accept
6 their current offer of compensation, correct?

7 A. That is correct.

8 Q. And you say that that is because the
9 compensation offer has not included consideration
10 for damage to the remainder, correct?

11 A. Correct.

12 Q. So is it damage to the remainder, the
13 amount of damage to the remainder that is the main
14 obstacle?

15 A. It is in terms of the whole picture. I
16 look at it as a package, total negotiation rather
17 than one singular item.

18 So I'm sure your view it all boils down to
19 the compensation dollar which ultimately I
20 understand that is true, but there are other issues
21 that impact it.

22 Q. Would you agree that compensation is
23 the main issue?

24 A. Ultimately, I guess.

1 Q. And some of your other issues could
2 probably be resolved with additional compensation?

3 A. Perhaps.

4 Q. Perhaps.

5 We will get to the other issues. First of
6 all, regarding the compensation, you believe you
7 should be paid damage to the remainder?

8 A. Correct.

9 Q. You understand that ATXI's current offer
10 does not pay damages to the remainder?

11 A. Correct.

12 Q. So we have a fundamental disagreement
13 with respect to damages to the remainder?

14 A. Uh-huh, that's correct.

15 Q. And in your direct testimony, if you
16 refer to line 62 and 63, if you have that before
17 you.

18 A. Uh-huh.

19 Q. Or yeah, 60 through 63. You say it
20 appears very clear to me that ATXI is completely
21 disregarding the damage to my property outside of
22 the immediate remainder.

23 A. That's correct.

24 Q. I think your counsel mentioned before,

1 but did you receive an appraisal of your property
2 from ATXI?

3 A. I guess it depends on your definition
4 of appraisal because we received a copy, I believe,
5 which was a fly-over or something but was not
6 signed by a licensed appraiser. There was no --
7 there were a lot of disclaimers with regard to no
8 improvement considerations such as our tiling, on
9 those kinds of things.

10 Q. Do you have a copy of that appraisal
11 with you today?

12 A. I probably do.

13 MR. O'BRIEN: Is this it?

14 A. Yes, I do.

15 MR. DEARMONT: Just give us one brief
16 minute?

17 JUDGE ALBERS: Sure.

18 MR. DEARMONT: I'm going to give this back
19 to you.

20 A. Please.

21 Q. Thank you. I'm going to show you a copy
22 of, we will mark it ATXI Cross Exhibit 2.

23 (ATXI Cross 2 marked for
24 identification.)

1 Q. Is it your testimony that you have not
2 seen that appraisal?

3 A. I have not seen this at all.

4 Q. Okay. Moving on, attached to your
5 testimony as Exhibit 1.2 is a calculation sheet?

6 A. Yes.

7 Q. And there does it have a line item for
8 damage to the remainder?

9 A. Yes, it does, and it is zero.

10 Q. It is zero.

11 You would agree that you do not agree with
12 the sum being zero for damages to your remainder?

13 A. That is correct.

14 Q. And to date have you provided ATXI with
15 any documents that show that additional money
16 should be paid for that easement?

17 A. We have not presented any documents. We
18 do have strong reasons.

19 Q. Have you presented a formal counter
20 offer of any kind?

21 A. No.

22 Q. Have you provided your own appraisal?

23 A. No.

24 Q. Have you provided any comps or other

1 data to support the fact that there might be
2 damages to the remainder?

3 A. We discussed the fact of various things
4 that might impact the remainder such as the
5 compaction of soil over our tiling because our main
6 tiling runs within the easement, and some of it is
7 as deep as 15 feet. There is no way that we are
8 going to know what those compaction issues are
9 because that is not just like ripping the top off
10 and other things, you know, such as that.

11 Q. You have not assigned a dollar value
12 that you feel would adequately compensate you for
13 soil compaction?

14 A. No.

15 Q. And if we deal just with soil
16 compaction, on line -- I think you bring that up on
17 lines 85 and 86 of your direct testimony?

18 A. Uh-huh.

19 Q. Are you -- do you know what an AIMA
20 agreement is?

21 A. That's the one with ag --

22 Q. Agricultural Impact Mitigation
23 Agreement?

24 A. Uh-huh.

1 Q. And have you read that document?

2 A. I did, the one they sent out.

3 Q. And are there provisions in that
4 agreement that deal with soil compaction issues?

5 A. But it appears to me that those are
6 basically, like I said, top levels, not what would
7 impact the tile.

8 Q. So you raised this issue with ATXI?

9 A. Yes, I did.

10 Q. And in response did they provide you
11 with what is attached to your testimony as Exhibit
12 1.3?

13 A. I did.

14 Q. And does that also have the additional
15 language dealing with soil compaction?

16 A. A limited amount, yes.

17 Q. So they had made attempts to address
18 your issues dealing with soil compaction; would you
19 agree?

20 A. I would say limitedly, but if I may
21 add, when we were given these documents they were
22 basically laid out there. There was no discussion
23 on how some of that would apply. To me negotiation
24 means there is an exchange for understanding and

1 that has not been done.

2 Q. Has your attorney provided language that
3 you would like to see in that agreement?

4 A. Not at this point because we just
5 received that at our last meeting as we were
6 basically ready to leave.

7 Q. And that was I believe -- what date was
8 that?

9 A. September 11th.

10 Q. September 11th. So to date you still
11 have not or your attorney has not responded?

12 A. That's correct.

13 Q. But he intends to respond?

14 A. I would assume so.

15 Q. Okay. As for meeting with ATXI
16 representatives, you state that you had met with
17 them on April 30th; is that correct?

18 A. That's correct.

19 Q. And at that time they presented you with
20 a written offer.

21 A. Uh-huh.

22 Q. And that offer included the calculation
23 sheet that you have attached as Exhibit 1.1 to your
24 testimony?

1 A. That's correct.

2 Q. And then again you met with the ATXI
3 representatives on August 15th; is that correct?

4 A. We did.

5 Q. And at that meeting they presented you
6 with an increased offer; is that correct?

7 A. No, they apparently failed to give it to
8 us at the attorney's office. We went home. They
9 handed it to my brother on their way home. They
10 did not give it directly to me, they gave it to my
11 brother and asked him to give it to me. There were
12 no explanations given with it, and I just received
13 it.

14 Q. To you personally -- when it was given
15 to your brother did he -- was he present at the
16 meeting?

17 A. At the meeting, yes, we were both at the
18 meeting, and nothing was given to us at the
19 meeting.

20 Q. You did receive it on August 15th, an
21 updated offer?

22 A. It was much later in the day, yes.

23 Q. But the same day?

24 A. It was the same day.

1 Q. Okay. And you stated that you had
2 another meeting on September 11th with ATXI; is
3 that correct?

4 A. That's correct.

5 Q. And at that meeting, that's when they
6 suggested additional language to -- in the form of
7 a confidential supplemental agreement?

8 A. That's when they handed it us, yes.
9 They didn't really discuss it.

10 Q. Attempting to address issues such as
11 abandonment, soil compaction, crop damages, field
12 tile damages?

13 A. Uh-huh.

14 Q. Several issues that you had raised?

15 A. Right.

16 Q. Okay. It also states in your testimony
17 on line 92 through 94 that you contacted ATXI to
18 express an additional concern?

19 A. Well, that was at the meeting when we
20 did that.

21 Q. So that was an additional meeting?

22 A. No, that was the same meeting as with
23 the attorney.

24 Q. The September 11th correction date?

1 A. Yeah, that's why the correction.

2 Q. Got it.

3 A. And that was related with the access --

4 Q. Right. Okay.

5 A. -- to all this other.

6 Q. And you have requested two additional

7 pole relocation requests; is that correct?

8 A. We did with regard to our tiling issues.

9 Q. And for the first request are you aware

10 ATXI did attempt to negotiate with your adjoining

11 landowners to accommodate your concern?

12 A. We were told that.

13 Q. Okay. And for your second relocation

14 request are you aware that ATXI has agreed to

15 relocate poles?

16 A. I was only made aware of that after

17 getting the information for today's meeting.

18 Q. But you are now aware of that?

19 A. I am now aware of that.

20 MS. RUST: Okay. Thank you. I have nothing

21 further.

22 THE WITNESS: Am I to keep this?

23 MR. DEARMONT: That's what we are talking

24 about.

1 MS. RUST: We will move for admission of the
2 Cross Exhibit 1.

3 JUDGE ALBERS: Okay.

4 MR. O'BRIEN: Can I see that?

5 MR. DEARMONT: We do not move that. I do
6 not intend --

7 THE WITNESS: Is that it, then?

8 JUDGE ALBERS: Actually just wait one
9 minute.

10 A. Okay.

11 MS. RUST: I'm done. Someone else might
12 have a question. I apologize.

13 JUDGE ALBERS: Sorry. I don't think staff
14 had any questions for you; is that correct?

15 MR. HARVEY: That's correct, your Honor.

16 JUDGE ALBERS: Did you have any redirect?

17 MR. O'BRIEN: The only redirect I have is
18 basically the same redirect I had for Mr. Liehr.

19 REDIRECT EXAMINATION

20 QUESTIONS BY MR. O'BRIEN:

21 Q. Ms. Jones, you are not saying that no
22 matter what the offer might be, you would not be
23 willing to discuss it, accept it, consider it, but
24 as you sit here today you have not yet received

1 what you consider a reasonable, fair offer that you
2 could except?

3 A. That is correct.

4 MR. O'BRIEN: Okay. Thank you. Anything
5 further?

6 MS. RUST: No. Thank you.

7 MR. O'BRIEN: I move for the admission of
8 her direct testimony, Intervenor Jones Exhibit 1.0
9 and attachments 1.1, 1.2. 1.3 with the
10 understanding that the one is going to be redacted
11 as we agreed earlier this morning.

12 MR. DEARMONT: All three will be. We will
13 work with counsel to make sure it happens.

14 JUDGE ALBERS: All right. Any objection to
15 ATXI Cross Exhibit 1?

16 MR. O'BRIEN: No.

17 JUDGE ALBERS: Hearing none, then Cross
18 Exhibit 1 is admitted.

19 (ATXI Cross Exhibit 1 admitted.)

20 JUDGE ALBERS: All right. Then any
21 objection, then, to the Intervenor Jones Exhibit 1
22 and proprietary versions of Exhibit 1.1, 1.2, 1.3?

23 MR. DEARMONT: No objection.

24 JUDGE ALBERS: I know you have not talked,

1 but roughly can give me an idea when we could
2 expect the public versions of 1.1, 1.2. 1.3?

3 MR. DEARMONT: Tomorrow.

4 JUDGE ALBERS: Okay.

5 MR. DEARMONT: Hopefully.

6 JUDGE ALBERS: All right. Your motion to
7 admit covers those as well?

8 MR. O'BRIEN: Yes.

9 JUDGE ALBERS: Okay. Once they get filed I
10 will send out a ruling admitting them into the
11 record once we have them, so --

12 MR. DEARMONT: Maybe this is a technical
13 nuance, but do those need to be marked as revised
14 exhibits or --

15 JUDGE ALBERS: Well, that's a good question.
16 I think once I have the clerk's office take down
17 what's publicly available, yeah, they are going to
18 be revised. They will be labeled as such as being
19 proprietary, so yeah.

20 So Mr. O'Brien, can you provide 1.1, 1.2,
21 1.3 with the label being proprietary or whatever
22 appropriate?

23 MR. O'BRIEN: We will figure that out.

24 JUDGE ALBERS: Yeah, okay. All right.

1 Meanwhile I will get them taken off the e-Docket.
2 (Jones Exhibits 1.0, 1.1, 1.2 and
3 1.3 admitted.)
4 JUDGE ALBERS: All right. I think that is
5 everything from Ms. Jones then, and Mr. Hoewing?
6 MR. O'BRIEN: One witness left.
7 Mr. Hoewing?
8 (Whereupon Robert Hoewing took the stand.)
9 JUDGE ALBERS: Mr. Hoewing, you were
10 previously sworn in?
11 THE WITNESS: Yes.
12 DIRECT EXAMINATION
13 QUESTIONS BY MR. O'BRIEN:
14 Q. Thank you. Would you state your name
15 and address for the record, please?
16 A. Robert Hoewing, 9835 Comthwaite Road,
17 Macon, Illinois, 62544.
18 Q. And are you the same Robert Hoewing who
19 prepared the direct testimony consisting of six
20 typewritten pages --
21 A. Yes.
22 Q. -- that has been marked as Intervenor
23 Hoewing Exhibit 1.0?
24 A. Yes.

1 Q. And attached to that testimony there
2 are Exhibits 1.1, 1.2 and 1.3; is that correct?

3 A. Yes, that is correct.

4 Q. And you were present in the hearing room
5 this morning, were you not, when counsel and I
6 agreed to amend those exhibits to redact any
7 proprietary confidential information?

8 A. Correct.

9 Q. Okay. So you are aware that's going to
10 happen to those exhibits?

11 A. Yes.

12 Q. If I were to ask you the questions set
13 forth in your prepared testimony, would you answer
14 those questions in the same or substantially the
15 same manner?

16 A. Yes, I would.

17 Q. Do you have any amendments to your
18 testimony?

19 A. No.

20 Q. Okay. Thank you.

21 CROSS-EXAMINATION

22 QUESTIONS BY MS. RUST:

23 Q. Thank you. Good afternoon, Mr. Hoewing.

24 A. Hello.

1 Q. Would you agree that the main obstacle
2 preventing a voluntary agreement is the amount of
3 compensation ATXI is offering?

4 A. Restate that.

5 Q. Would you agree that if ATXI's offer was
6 more substantial and perhaps included damages to
7 the remainder, you would accept that offer?

8 A. Money is not the main object. It is
9 conditions of the easement.

10 Q. So the terms of the easement are more
11 important?

12 A. As much or more, definitely.

13 Q. So if we were to come to an agreement on
14 easement terms, then would you accept the current
15 offer of compensation?

16 A. Not entirely because it doesn't have
17 anything to do with damage to crops and property
18 outside of the easement.

19 Q. So it doesn't have to do with crop
20 damage; is that one of your concerns?

21 A. That's one of them, yes.

22 Q. Have you provided any information on
23 crop damage to ATXI?

24 A. What do you mean by provided?

1 They know my position but --

2 Q. Well, any documentation supporting the
3 fact that you -- that the easement will cause you
4 crop damages?

5 A. What kind of --

6 Q. Bin receipts, crop insurance?

7 A. For example, there is a wet place in the
8 middle of the easement that is -- when we farm we
9 have to go around it in wet years, and if it is wet
10 when they are working there, they won't be able to
11 go through it, and they will pass over it onto land
12 that is not within the easement, and they will be
13 driving on other parts of the property. I don't
14 know how far they will go. It is hard to set up a
15 dollar amount of damages.

16 Q. So you can't quantify that damage?

17 A. Not a dollar amount because I don't
18 know how far they -- depending on the conditions
19 when they go through the property.

20 Q. But you believe ATXI should come up with
21 some figure?

22 A. Well, there is definitely going to be
23 damage if it is wet when they are in that area,
24 yes.

1 Q. And are you aware of the AIMA,
2 Agricultural Impact Mitigation Agreement?

3 A. Yes, yes.

4 Q. And have you read the terms of that
5 agreement?

6 A. Yes.

7 Q. And do you agree that it addresses
8 damages, crop damages?

9 A. Yeah, but it doesn't spell out dollar
10 amounts and conditions.

11 Q. So have you presented information to
12 ATXI for language that you would like to see
13 included?

14 A. The first meeting that we had with them
15 we presented several different items of concern,
16 and they never were taken back to anybody else. In
17 fact, on the second meeting we had with them, they
18 brought the land agent person that we had spoke to
19 the first time brought his, one of his superiors,
20 and he even questioned, you know, had these items
21 been brought up in the first meeting.

22 He said yeah, I had them, and he asked, well
23 what, why didn't you present them to me.

24 So those were the kinds of things that never

1 were followed through with.

2 Q. So Exhibit 1.3 is attached to your
3 testimony, correct?

4 A. 1.3, yes.

5 Q. And is that document a confidential
6 settlement agreement, supplemental agreement?

7 A. Let me look at it. Okay. Yes, that
8 was the agreement that they handed us at the last
9 meeting.

10 Q. So in addition to the agricultural
11 impact statement, ATXI is making reasonable efforts
12 to consider the issues you are raising with respect
13 to crop damages; would you agree?

14 A. It doesn't address the idea of erosion
15 at the back of the property which has been a big
16 issue for the last 50 to 75 years, and it also does
17 not address the issue of a major tile which goes
18 right through the easement property.

19 Q. Well, are you aware of certain actions
20 ATXI has taken to address your concerns regarding
21 the location of the poles on your property?

22 A. Yes, but there are clay tile, clay tile
23 on that property. We offered a map that we showed
24 the most recent tile that has been put in the last

1 25, 30 years, but the whole property was tiled
2 before my grandparents bought it in the 1920's with
3 clay tile, and I have no idea where most of those
4 are, and the only way to find them is when they
5 start drilling, excavating.

6 Q. Again, under the agricultural impact
7 agreement, do you agree, would you agree it has
8 issues that can deal with tiling damage caused --

9 A. Not to the extent of myself and the
10 other property and adjoining farms that are drained
11 by the tile.

12 Q. So ATXI is making you offers, you just
13 don't feel they go far enough?

14 A. That's right.

15 Q. But you are not proposing alternative
16 language?

17 A. I have proposed several proposals that
18 they rejected.

19 Q. In the form of documentation, a mark up
20 of the agreement or specific terms that you don't
21 like with what has previously been provided?

22 A. We have offered other proposals, we have
23 offered -- the land that you were just talking
24 about, these last two parcels, have been totally

1 farmed and owned by our family, and it has been
2 farmed as one entity, and the tile was put in with
3 the idea that it never would be separated into
4 separate set parcels.

5 So therefore, we had no idea that this major
6 line that came through the tile would affect
7 anything like that, and that's where the logical
8 place to put it was.

9 Q. And so would you say that one of the
10 ways that you think you should be compensated is
11 for an additional figure of damages to the
12 remainder?

13 A. There are many alternatives, and that
14 would be one of them.

15 Q. But you have not suggested a specific
16 number or specific terms to address those issues?

17 A. Not a dollar amount, no.

18 Q. And you have been present at meetings we
19 previously discussed where ATXI has brought you an
20 increased offer, has suggested the confidential
21 settlement agreement to address various issues?

22 A. Are you talking about the second offer
23 that --

24 Q. Well, I have in your testimony I guess

1 three separate meetings that you have --

2 A. That's right. They never presented
3 just as my sister also stated. They never
4 presented us this offer at the meeting.

5 Q. Was your attorney present at the
6 meeting?

7 A. We had two attorneys present at the
8 meeting. They never presented the meet -- at the
9 meeting they never presented the offer.

10 Q. The attorneys never presented the offer
11 to you?

12 A. The land agents never presented the
13 offer. They brought it -- they called us up on the
14 telephone after we had gotten home, and they
15 delivered it to my house, one of the agents did.

16 Q. You are talking about the calculation
17 sheet. I'm talking about the confidential
18 supplemental agreement.

19 A. That was handed at the meeting.

20 Q. And in an attempt to address some of
21 your concerns?

22 A. Yeah, but it only addressed two basic
23 concerns of several, and the other concerns they
24 said that they couldn't meet them.

1 Q. And presently ATXI is awaiting your
2 attorney's comments on that document, correct, as
3 far as you know?

4 A. I'm not sure what you mean by that.

5 Q. Well, they have an offer, so -- and you
6 disagreed with some of the terms in that offer?

7 A. Correct.

8 Q. So presumably different language will be
9 coming back from your attorney; would you agree?

10 A. From our attorney?

11 Q. Yes.

12 A. They had already stated that this was
13 pretty much all they could offer at the last
14 meeting.

15 Q. That they weren't willing to negotiate
16 further?

17 A. That was basically the comment, yes,
18 that they -- this was the final offer, and we
19 mentioned other things that were of concern to us.
20 They said, well, those are nonnegotiable.

21 Q. Would you be surprised to know ATXI is
22 awaiting language changes from your attorney?

23 A. Yeah, I would be very surprised because
24 they also said that they kept trying to get in

1 contact with us, which they never did.

2 Q. So you are not aware of their contacts?

3 A. They have not contacted me, no.

4 Q. You are not aware of their contacts to
5 your attorney?

6 A. Not -- well, in recent days I was told
7 this morning that there has been some talk, yes.

8 MS. RUST: Okay. Thank you. I have nothing
9 further.

10 JUDGE ALBERS: Just one clarifying question.

11 A. Uh-huh.

12 EXAMINATION

13 QUESTIONS BY JUDGE ALBERS:

14 Q. In response to Ms. Rust's questions
15 about proposals to ATXI, you indicated there you
16 had several proposals that you made back to them.
17 Were they just orally made?

18 A. We had a map. We presented them with a
19 map that was discussed awhile ago, and we were told
20 by the land agents that they had presented it to
21 the ICC or at least we were given that impression,
22 and then they were -- got -- talked back to us and
23 said that, well, you know, it was not accepted or
24 gave us that indication, yes.

1 Q. So you are saying you gave, you gave
2 them a map with some mark-ups on it?

3 A. Yes. Yes, sir.

4 Q. But did you have any language
5 provisions?

6 A. We had -- no, we had a map, and we had
7 documentation of pictures to show that it was a
8 viable map or route.

9 Q. Okay. This is a route change you were
10 proposing?

11 A. Yes. Correct, correct.

12 Q. Okay. All right. Other than that, did
13 you have any other written proposals?

14 A. No.

15 Q. Okay. Just trying to get your testimony
16 clear in my head.

17 A. Uh-huh.

18 JUDGE ALBERS: Thank you. Staff have any
19 questions?

20 MR. SAGONE: No, your Honor, we do not.

21 JUDGE ALBERS: Do you have any redirect?

22 REDIRECT EXAMINATION

23 QUESTIONS BY MR. O'BRIEN:

24 Q. We have gotten an answer, but just to

1 clarify, it was your understanding that the last
2 offer was a final offer; is that correct?

3 A. Yes.

4 Q. But is it your testimony that if there
5 would be further negotiations with regard to either
6 compensation or terms, that you would be willing to
7 consider such revised offers; is that correct?

8 A. Yes, yes.

9 MR. O'BRIEN: That's all that I have. Thank
10 you.

11 JUDGE ALBERS: All right.

12 MR. O'BRIEN: I will move for the admission
13 of Hoewing Exhibits 1.0 and then 1.1, 1.2, 1.3 as
14 we previously agreed as redacted.

15 JUDGE ALBERS: Okay. Did you have any
16 recross?

17 RECROSS-EXAMINATION

18 QUESTIONS BY MS. RUST:

19 Q. I just wanted to clarify based on your
20 questions that maps were provided in an effort to
21 maybe relocate the poles?

22 A. Yes.

23 Q. So that's what ATXI was responding to?

24 A. Not poles, it was route --

1 Q. Route adjustment?

2 A. A route adjustment, right.

3 Q. So they took that information and then

4 attempted to realign the poles to satisfy?

5 A. No, it was strictly a route alignment

6 change.

7 Q. Route alignment change.

8 MS. RUST: Okay. Thank you.

9 JUDGE ALBERS: With regard to the exhibits,

10 then, we will call them attachments as being

11 revised, but any objection then to Mr. Hoewing's

12 exhibits?

13 MR. DEARMONT: No objection.

14 JUDGE ALBERS: All right. Then Hoewing,

15 Intervenor Hoewing Exhibits 1.0, 1.1 Revised, 1.2

16 Revised and 1.3 Revised will be the public and

17 confidential version of all three are admitted.

18 (Hoewing Exhibits 1.0, 1.1

19 Revised, 1.2 Revised, and 1.3

20 Revised admitted.)

21 JUDGE ALBERS: All right. Our next witness

22 is a staff witness. So Mr. Harvey or Mr. Sagone,

23 are you prepared?

24 MR. HARVEY: We are indeed, your Honor.

1 (Whereupon Greg Rockrohr took the stand.)

2 DIRECT EXAMINATION

3 QUESTIONS BY MR. HARVEY:

4 Q. Mr. Rockrohr, having been previously
5 sworn, do you have before you -- would you, first
6 of all, state your name and spell it for the
7 record?

8 A. Greg Rockrohr, G-R-E-G,
9 R-O-C-K-R-O-H-R.

10 Q. Please state your employer and describe
11 your employment.

12 A. I'm an electrical engineer on the staff
13 of the Illinois Commerce Commission at 527 East
14 Capitol Avenue, Springfield, Illinois, 62701.

15 Q. Do you have before you a document that's
16 been marked for identification in this proceeding
17 as Staff Exhibit 1.0?

18 A. Yes.

19 Q. Does it consist of a cover page, table
20 of contents, and 16 pages of text in narrative form
21 as well attachments A through E inclusive?

22 A. Yes.

23 Q. And each of those attachments consists
24 of one page except for Attachment B which consists

1 of five?

2 A. That's correct.

3 Q. Was this testimony prepared by you or at
4 your direction?

5 A. Yes.

6 Q. It is true and correct?

7 A. Yes.

8 Q. If I ask you all, each of the questions
9 contained in Staff Exhibit 1.0, would your answers
10 be the same as they were on the day it was
11 submitted?

12 A. Yes.

13 Q. You are offering this as your direct
14 testimony in this proceeding?

15 A. Correct.

16 MR. HARVEY: Thank you, Mr. Rockroh. With
17 that I move Staff Exhibit 1.0 with Attachments A
18 through E into evidence and tender Mr. Rockrohr for
19 cross-examination.

20 JUDGE ALBERS: Any preference as to who goes
21 first?

22 MR. O'BRIEN: You can go first. I just had
23 a couple questions.

24 MR. DEARMONT: Do you mind if I yield to

1 you?

2 MR. O'BRIEN: No, that's fine.

3 CROSS-EXAMINATION

4 QUESTIONS BY MR. O'BRIEN:

5 Q. Mr. Rockrohr, your direct testimony,
6 pages 15 and 16, you have filed a response to this.
7 I don't want to mischaracterize your testimony, so
8 I will characterize it, and if you think that's
9 mischaracterized, let me know, okay? Tell me what
10 I misunderstood.

11 Basically your testimony is that one
12 possibility of a logical action that the Commission
13 could take in this matter would be to
14 simultaneously grant eminent domain and at the same
15 time grant or authorize a deviation of route; is
16 that --

17 A. You are very close. I would say amend
18 the certificate and order pursuant to Section 8-503
19 that was previously granted.

20 Q. Now, however, that is your opinion, is
21 that correct, not necessarily a legal opinion?

22 A. That's correct.

23 Q. Okay. So as far as the ultimate issue
24 goes, that it is your recommendation, but it is

1 going to be up to the judge to decide how this is
2 going to be handled, right, and whether legally it
3 can be handled the way you have suggested?

4 A. That was one of my suggestions. I
5 included two suggestions in my testimony.

6 Q. What was your second one?

7 A. Second bullet at the top of page 16
8 states that the Commission could withhold granting
9 eminent domain authority during this proceeding.

10 Q. And in response to, let's see, pages 15
11 and 16, it says it would be entirely appropriate
12 for the Commission to withhold eminent domain for
13 all parcels along the Pana to Mt. Zion segment
14 until such time as the certificate in Section 8-503
15 order has been amended; is that correct?

16 A. That's a correct characterization.

17 MR. O'BRIEN: Okay. That's all that I have.
18 Thank you.

19 JUDGE ALBERS: Mr. Dearmont or Ms. Rust?

20 MR. DEARMONT: I have no questions for
21 Mr. Rockrohr.

22 JUDGE ALBERS: All right. Mr. Harvey, do
23 you have any redirect?

24 MR. HARVEY: I do not, your Honor. Thank

1 you.

2 JUDGE ALBERS: All right. Is there any
3 objection, then, to staff exhibits, Staff Exhibit 1
4 with attachments A through E?

5 MR. DEARMONT: No objection.

6 MR. O'BRIEN: None.

7 JUDGE ALBERS: Hearing none they are
8 admitted.

9 (Staff Exhibits 1.0 A through E
10 admitted.)

11 JUDGE ALBERS: Thank you, Mr. Rockrohr.
12 Is there -- I think that covers all of the
13 evidence that was previously offered.

14 MR. O'BRIEN: We have nothing further.

15 MR. DEARMONT: Nor does the company.
16 Appreciate everyone's time this morning.

17 Just to confirm, initial briefs are due on
18 Thursday of this week, correct?

19 JUDGE ALBERS: I have in my notes the 24th,
20 noon.

21 MR. O'BRIEN: Initial brief?

22 JUDGE ALBERS: I have in my notes on the
23 24th, Wednesday at noon and then an order out by
24 Friday, but if that -- if the transcript from our

1 initial meeting reflects something different, I
2 would be happy to --

3 MR. DEARMONT: I have some handwritten notes
4 from that meeting. Just let me confirm.

5 MR. STURTEVANT: That's what I have in my
6 calendar.

7 MR. DEARMONT: The 24th, Wednesday, noon, the
8 24th. Yes. Thanks. Sorry.

9 JUDGE ALBERS: Okay. I will have that
10 ruling out as soon as I can basically without the
11 line for the briefs. It is very similar to the one
12 that you would have seen earlier. So basically
13 those five criteria the Commission generally would
14 consider.

15 So all right. If there is nothing further,
16 then I will go ahead and leave the record open just
17 for the pending exhibits and, again, thank you,
18 everyone, for your time and just continue this
19 generally.

20 MR. HARVEY: Thanks.

21 (Hearing continued.)

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